

REFERENCE TITLE: school districts; liability; immunity waiver

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HB 2029

Introduced by  
Representative Kavanagh

AN ACT

AMENDING SECTIONS 15-341 AND 15-512, ARIZONA REVISED STATUTES; RELATING TO  
FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-341, Arizona Revised Statutes, is amended to  
3 read:

4 15-341. General powers and duties; immunity; delegation

5 A. The governing board shall:

6 1. Prescribe and enforce policies and procedures for the governance of  
7 the schools, not inconsistent with law or rules prescribed by the state board  
8 of education.

9 2. Maintain the schools established by it for the attendance of each  
10 pupil for a period of not less than one hundred seventy-five school days or  
11 two hundred school days, as applicable, or its equivalent as approved by the  
12 superintendent of public instruction for a school district operating on a  
13 year-round operation basis, to offer an educational program on the basis of a  
14 four day school week or to offer an alternative kindergarten program on the  
15 basis of a three day school week, in each school year, and if the funds of  
16 the district are sufficient, for a longer period, and as far as practicable  
17 with equal rights and privileges.

18 3. Exclude from schools all books, publications, papers or audiovisual  
19 materials of a sectarian, partisan or denominational character.

20 4. Manage and control the school property within its district.

21 5. Acquire school furniture, apparatus, equipment, library books and  
22 supplies for the use of the schools.

23 6. Prescribe the curricula and criteria for the promotion and  
24 graduation of pupils as provided in sections 15-701 and 15-701.01.

25 7. Furnish, repair and insure, at full insurable value, the school  
26 property of the district.

27 8. Construct school buildings on approval by a vote of the district  
28 electors.

29 9. Make in the name of the district conveyances of property belonging  
30 to the district and sold by the board.

31 10. Purchase school sites when authorized by a vote of the district at  
32 an election conducted as nearly as practicable in the same manner as the  
33 election provided in section 15-481 and held on a date prescribed in section  
34 15-491, subsection E, but such authorization shall not necessarily specify  
35 the site to be purchased and such authorization shall not be necessary to  
36 exchange unimproved property as provided in section 15-342, paragraph 23.

37 11. Construct, improve and furnish buildings used for school purposes  
38 when such buildings or premises are leased from the national park service.

39 12. Purchase school sites or construct, improve and furnish school  
40 buildings from the proceeds of the sale of school property only on approval  
41 by a vote of the district electors.

42 13. Hold pupils to strict account for disorderly conduct on school  
43 property.

44 14. Discipline students for disorderly conduct on the way to and from  
45 school.

1       15. Except as provided in section 15-1224, deposit all monies received  
2 by the district as gifts, grants and devises with the county treasurer who  
3 shall credit the deposits as designated in the uniform system of financial  
4 records. If not inconsistent with the terms of the gifts, grants and devises  
5 given, any balance remaining after expenditures for the intended purpose of  
6 the monies have been made shall be used for reduction of school district  
7 taxes for the budget year, except that in the case of accommodation schools  
8 the county treasurer shall carry the balance forward for use by the county  
9 school superintendent for accommodation schools for the budget year.

10       16. Provide that, if a parent or legal guardian chooses not to accept a  
11 decision of the teacher as provided in section 15-521, paragraph 3, the  
12 parent or legal guardian may request in writing that the governing board  
13 review the teacher's decision. Nothing in this paragraph shall be construed  
14 to release school districts from any liability relating to a child's  
15 promotion or retention.

16       17. Provide for adequate supervision over pupils in instructional and  
17 noninstructional activities by certificated or noncertificated personnel.

18       18. Use school monies received from the state and county school  
19 apportionment exclusively for payment of salaries of teachers and other  
20 employees and contingent expenses of the district.

21       19. Make an annual report to the county school superintendent on or  
22 before October 1 each year in the manner and form and on the blanks  
23 prescribed by the superintendent of public instruction or county school  
24 superintendent. The board shall also make reports directly to the county  
25 school superintendent or the superintendent of public instruction whenever  
26 required.

27       20. Deposit all monies received by school districts other than student  
28 activities monies or monies from auxiliary operations as provided in sections  
29 15-1125 and 15-1126 with the county treasurer to the credit of the school  
30 district except as provided in paragraph 21 of this subsection and sections  
31 15-1223 and 15-1224, and the board shall expend the monies as provided by law  
32 for other school funds.

33       21. Establish a bank account in which the board during a month may  
34 deposit miscellaneous monies received directly by the district. The board  
35 shall remit monies deposited in the bank account at least monthly to the  
36 county treasurer for deposit as provided in paragraph 20 of this subsection  
37 and in accordance with the uniform system of financial records.

38       22. Employ an attorney admitted to practice in this state whose  
39 principal practice is in the area of commercial real estate, or a real estate  
40 broker who is licensed by this state and who is employed by a reputable  
41 commercial real estate company, to negotiate a lease of five or more years  
42 for the school district if the governing board decides to enter into a lease  
43 of five or more years as lessor of school buildings or grounds as provided in  
44 section 15-342, paragraph 7 or 10. Any lease of five or more years  
45 negotiated pursuant to this paragraph shall provide that the lessee is

1 responsible for payment of property taxes pursuant to the requirements of  
2 section 42-11104.

3 23. Prescribe and enforce policies and procedures for disciplinary  
4 action against a teacher who engages in conduct that is a violation of the  
5 policies of the governing board but that is not cause for dismissal of the  
6 teacher or for revocation of the certificate of the teacher. Disciplinary  
7 action may include suspension without pay for a period of time not to exceed  
8 ten school days. Disciplinary action shall not include suspension with pay  
9 or suspension without pay for a period of time longer than ten school days.  
10 The procedures shall include notice, hearing and appeal provisions for  
11 violations that are cause for disciplinary action. The governing board may  
12 designate a person or persons to act on behalf of the board on these matters.

13 24. Prescribe and enforce policies and procedures for disciplinary  
14 action against an administrator who engages in conduct that is a violation of  
15 the policies of the governing board regarding duties of administrators but  
16 that is not cause for dismissal of the administrator or for revocation of the  
17 certificate of the administrator. Disciplinary action may include suspension  
18 without pay for a period of time not to exceed ten school days. Disciplinary  
19 action shall not include suspension with pay or suspension without pay for a  
20 period of time longer than ten school days. The procedures shall include  
21 notice, hearing and appeal provisions for violations that are cause for  
22 disciplinary action. The governing board may designate a person or persons  
23 to act on behalf of the board on these matters. For violations that are  
24 cause for dismissal, the provisions of notice, hearing and appeal in chapter  
25 5, article 3 of this title shall apply. The filing of a timely request for a  
26 hearing suspends the imposition of a suspension without pay or a dismissal  
27 pending completion of the hearing.

28 25. Notwithstanding section 13-3108, prescribe and enforce policies and  
29 procedures that prohibit a person from carrying or possessing a weapon on  
30 school grounds unless the person is a peace officer or has obtained specific  
31 authorization from the school administrator.

32 26. Prescribe and enforce policies and procedures relating to the  
33 health and safety of all pupils participating in district sponsored practice  
34 sessions, games or other interscholastic athletic activities, including the  
35 provision of water.

36 27. Prescribe and enforce policies and procedures regarding the smoking  
37 of tobacco within school buildings. The policies and procedures shall be  
38 adopted in consultation with school district personnel and members of the  
39 community and shall state whether smoking is prohibited in school buildings.  
40 If smoking in school buildings is not prohibited, the policies and procedures  
41 shall clearly state the conditions and circumstances under which smoking is  
42 permitted, those areas in a school building that may be designated as smoking  
43 areas and those areas in a school building that may not be designated as  
44 smoking areas.

1       28. Establish an assessment, data gathering and reporting system as  
2 prescribed in chapter 7, article 3 of this title.

3       29. Provide special education programs and related services pursuant to  
4 section 15-764, subsection A to all children with disabilities as defined in  
5 section 15-761.

6       30. Administer competency tests prescribed by the state board of  
7 education for the graduation of pupils from high school.

8       31. Secure insurance coverage for all construction projects for  
9 purposes of general liability, property damage and workers' compensation and  
10 secure performance and payment bonds for all construction projects.

11       32. Keep on file the resumes of all current and former employees who  
12 provide instruction to pupils at a school. Resumes shall include an  
13 individual's educational and teaching background and experience in a  
14 particular academic content subject area. A school district shall inform  
15 parents and guardians of the availability of the resume information and shall  
16 make the resume information available for inspection on request of parents  
17 and guardians of pupils enrolled at a school. Nothing in this paragraph  
18 shall be construed to require any school to release personally identifiable  
19 information in relation to any teacher or employee including the teacher's or  
20 employee's address, salary, social security number or telephone number.

21       33. Report to local law enforcement agencies any suspected crime  
22 against a person or property that is a serious offense as defined in section  
23 13-706 or that involves a deadly weapon or dangerous instrument or serious  
24 physical injury and any conduct that poses a threat of death or serious  
25 physical injury to employees, students or anyone on the property of the  
26 school. This paragraph does not limit or preclude the reporting by a school  
27 district or an employee of a school district of suspected crimes other than  
28 those required to be reported by this paragraph. For the purposes of this  
29 paragraph, "dangerous instrument", "deadly weapon" and "serious physical  
30 injury" have the same meanings prescribed in section 13-105.

31       34. In conjunction with local law enforcement agencies and local  
32 medical facilities, develop an emergency response plan for each school in the  
33 school district in accordance with minimum standards developed jointly by the  
34 department of education and the division of emergency management within the  
35 department of emergency and military affairs.

36       35. Annually assign at least one school district employee to  
37 participate in a multihazard crisis training program developed or selected by  
38 the governing board.

39       36. Provide written notice to the parents or guardians of all students  
40 affected in the school district at least thirty days prior to a public  
41 meeting to discuss closing a school within the school district. The notice  
42 shall include the reasons for the proposed closure and the time and place of  
43 the meeting. The governing board shall fix a time for a public meeting on  
44 the proposed closure no less than thirty days before voting in a public  
45 meeting to close the school. The school district governing board shall give

1 notice of the time and place of the meeting. At the time and place  
2 designated in the notice, the school district governing board shall hear  
3 reasons for or against closing the school. The school district governing  
4 board is exempt from this paragraph if it is determined by the governing  
5 board that the school shall be closed because it poses a danger to the health  
6 or safety of the pupils or employees of the school.

7 37. Incorporate instruction on Native American history into appropriate  
8 existing curricula.

9 38. Prescribe and enforce policies and procedures allowing pupils who  
10 have been diagnosed with anaphylaxis by a health care provider licensed  
11 pursuant to title 32, chapter 13, 14, 17 or 25 or by a registered nurse  
12 practitioner licensed and certified pursuant to title 32, chapter 15 to carry  
13 and self-administer emergency medications including auto-injectable  
14 epinephrine while at school and at school sponsored activities. The pupil's  
15 name on the prescription label on the medication container or on the  
16 medication device and annual written documentation from the pupil's parent or  
17 guardian to the school that authorizes possession and self-administration is  
18 sufficient proof that the pupil is entitled to the possession and  
19 self-administration of the medication. The policies shall require a pupil  
20 who uses auto-injectable epinephrine while at school and at school sponsored  
21 activities to notify the nurse or the designated school staff person of the  
22 use of the medication as soon as practicable. A school district and its  
23 employees are immune from civil liability with respect to all decisions made  
24 and actions taken that are based on good faith implementation of the  
25 requirements of this paragraph, except in cases of wanton or wilful neglect.

26 39. Allow the possession and self-administration of prescription  
27 medication for breathing disorders in handheld inhaler devices by pupils who  
28 have been prescribed that medication by a health care professional licensed  
29 pursuant to title 32. The pupil's name on the prescription label on the  
30 medication container or on the handheld inhaler device and annual written  
31 documentation from the pupil's parent or guardian to the school that  
32 authorizes possession and self-administration shall be sufficient proof that  
33 the pupil is entitled to the possession and self-administration of the  
34 medication. A school district and its employees are immune from civil  
35 liability with respect to all decisions made and actions taken that are based  
36 on a good faith implementation of the requirements of this paragraph.

37 40. Prescribe and enforce policies and procedures to prohibit pupils  
38 from harassing, intimidating and bullying other pupils on school grounds, on  
39 school property, on school buses, at school bus stops and at school sponsored  
40 events and activities that include the following components:

41 (a) A procedure for pupils to confidentially report to school  
42 officials incidents of harassment, intimidation or bullying.

43 (b) A procedure for parents and guardians of pupils to submit written  
44 reports to school officials of suspected incidents of harassment,  
45 intimidation or bullying.

1 (c) A requirement that school district employees report suspected  
2 incidents of harassment, intimidation or bullying to the appropriate school  
3 official.

4 (d) A formal process for the documentation of reported incidents of  
5 harassment, intimidation or bullying, except that no documentation shall be  
6 maintained unless the harassment, intimidation or bullying has been proven.

7 (e) A formal process for the investigation by the appropriate school  
8 officials of suspected incidents of harassment, intimidation or bullying.

9 (f) Disciplinary procedures for pupils who have admitted or been found  
10 to have committed incidents of harassment, intimidation or bullying.

11 (g) A procedure that sets forth consequences for submitting false  
12 reports of incidents of harassment, intimidation or bullying.

13 41. Prescribe and enforce policies and procedures regarding changing or  
14 adopting attendance boundaries that include the following components:

15 (a) A procedure for holding public meetings to discuss attendance  
16 boundary changes or adoptions that allows public comments.

17 (b) A procedure to notify the parents or guardians of the students  
18 affected.

19 (c) A procedure to notify the residents of the households affected by  
20 the attendance boundary changes.

21 (d) A process for placing public meeting notices and proposed maps on  
22 the school district's website for public review, if the school district  
23 maintains a website.

24 (e) A formal process for presenting the attendance boundaries of the  
25 affected area in public meetings that allows public comments.

26 (f) A formal process for notifying the residents and parents or  
27 guardians of the affected area as to the decision of the governing board on  
28 the school district's website, if the school district maintains a website.

29 (g) A formal process for updating attendance boundaries on the school  
30 district's website within ninety days of an adopted boundary change. The  
31 school district shall send a direct link to the school district's attendance  
32 boundaries website to the department of real estate.

33 (h) If the land that a school was built on was donated within the past  
34 five years, a formal process to notify the entity that donated the land  
35 affected by the decision of the governing board.

36 42. If the state board of education determines that the school district  
37 has committed an overexpenditure as defined in section 15-107, provide a copy  
38 of the fiscal management report submitted pursuant to section 15-107,  
39 subsection H on its website and make copies available to the public on  
40 request. The school district shall comply with a request within five  
41 business days after receipt.

42 B. Notwithstanding subsection A, paragraphs 8, 10 and 12 of this  
43 section, the county school superintendent may construct, improve and furnish  
44 school buildings or purchase or sell school sites in the conduct of an  
45 accommodation school.

1 C. If any school district acquires real or personal property, whether  
2 by purchase, exchange, condemnation, gift or otherwise, the governing board  
3 shall pay to the county treasurer any taxes on the property that were unpaid  
4 as of the date of acquisition, including penalties and interest. The lien  
5 for unpaid delinquent taxes, penalties and interest on property acquired by a  
6 school district:

7 1. Is not abated, extinguished, discharged or merged in the title to  
8 the property.

9 2. Is enforceable in the same manner as other delinquent tax liens.

10 D. The governing board may not locate a school on property that is  
11 less than one-fourth mile from agricultural land regulated pursuant to  
12 section 3-365, except that the owner of the agricultural land may agree to  
13 comply with the buffer zone requirements of section 3-365. If the owner  
14 agrees in writing to comply with the buffer zone requirements and records the  
15 agreement in the office of the county recorder as a restrictive covenant  
16 running with the title to the land, the school district may locate a school  
17 within the affected buffer zone. The agreement may include any stipulations  
18 regarding the school, including conditions for future expansion of the school  
19 and changes in the operational status of the school that will result in a  
20 breach of the agreement.

21 E. A school district, its governing board members, its school council  
22 members and its employees are immune from civil liability for the  
23 consequences of adoption and implementation of policies and procedures  
24 pursuant to subsection A of this section and section 15-342. This waiver  
25 does not apply if the school district, its governing board members, its  
26 school council members or its employees ~~are guilty of gross negligence or~~  
27 ~~intentional misconduct~~ ACTED WITH GROSS NEGLIGENCE.

28 F. A governing board may delegate in writing to a superintendent,  
29 principal or head teacher the authority to prescribe procedures that are  
30 consistent with the governing board's policies.

31 G. Notwithstanding any other provision of this title, a school  
32 district governing board shall not take any action that would result in an  
33 immediate reduction or a reduction within three years of pupil square footage  
34 that would cause the school district to fall below the minimum adequate gross  
35 square footage requirements prescribed in section 15-2011, subsection C,  
36 unless the governing board notifies the school facilities board established  
37 by section 15-2001 of the proposed action and receives written approval from  
38 the school facilities board to take the action. A reduction includes an  
39 increase in administrative space that results in a reduction of pupil square  
40 footage or sale of school sites or buildings, or both. A reduction includes  
41 a reconfiguration of grades that results in a reduction of pupil square  
42 footage of any grade level. This subsection does not apply to temporary  
43 reconfiguration of grades to accommodate new school construction if the  
44 temporary reconfiguration does not exceed one year. The sale of equipment  
45 that results in an immediate reduction or a reduction within three years that



1 falls below the equipment requirements prescribed in section 15-2011,  
2 subsection B is subject to commensurate withholding of school district  
3 capital outlay revenue limit monies pursuant to the direction of the school  
4 facilities board. Except as provided in section 15-342, paragraph 10,  
5 proceeds from the sale of school sites, buildings or other equipment shall be  
6 deposited in the school plant fund as provided in section 15-1102.

7 H. Subsections C through G of this section apply to a county board of  
8 supervisors and a county school superintendent when operating and  
9 administering an accommodation school.

10 I. Until the state board of education and the auditor general adopt  
11 rules pursuant to section 15-213, subsection I, a school district may procure  
12 construction services, including services for new school construction  
13 pursuant to section 15-2041, by the construction-manager-at-risk,  
14 design-build and job-order-contracting methods of project delivery as  
15 provided in title 41, chapter 23, except that the rules adopted by the  
16 director of the department of administration do not apply to procurements  
17 pursuant to this subsection. Any procurement commenced pursuant to this  
18 subsection may be completed pursuant to this subsection.

19 Sec. 2. Section 15-512, Arizona Revised Statutes, is amended to read:

20 15-512. Noncertificated personnel; fingerprinting personnel;  
21 background investigations; affidavit; civil immunity;  
22 violation; classification; definition

23 A. Noncertificated personnel and personnel who are not paid employees  
24 of the school district and who are not either the parent or the guardian of a  
25 pupil who attends school in the school district but who are required or  
26 allowed to provide services directly to pupils without the supervision of a  
27 certificated employee and who are initially hired by a school district after  
28 January 1, 1990 shall be fingerprinted as a condition of employment except  
29 for personnel who are required as a condition of licensing to be  
30 fingerprinted if the license is required for employment or for personnel who  
31 were previously employed by a school district and who reestablished  
32 employment with that district within one year after the date that the  
33 employee terminated employment with the district. A school district may  
34 release the results of a background check to another school district for  
35 employment purposes. The employee's fingerprints and the form prescribed in  
36 subsection D of this section shall be submitted to the school district within  
37 twenty days after the date an employee begins work. A school district may  
38 terminate an employee if the information on the form provided under  
39 subsection D of this section is inconsistent with the information received  
40 from the fingerprint check. The school district shall develop procedures for  
41 fingerprinting employees. For the purposes of this subsection, "supervision"  
42 means under the direction of and, except for brief periods of time during a  
43 school day or a school activity, within sight of a certificated employee when  
44 providing direct services to pupils.

1 B. Fingerprints submitted pursuant to this section shall be used to  
2 conduct a state and ~~national~~ FEDERAL criminal records check pursuant to  
3 section 41-1750 and Public Law 92-544. The department of public safety may  
4 exchange this fingerprint data with the federal bureau of investigation.

5 C. The school district shall assume the costs of fingerprint checks  
6 and may charge these costs to its fingerprinted employee, except that the  
7 school district may not charge the costs of the fingerprint check to  
8 personnel of the school district who are not paid employees. The fees charged  
9 for fingerprinting shall be deposited with the county treasurer who shall  
10 credit the deposit to the fingerprint fund of the school district. The costs  
11 charged to a fingerprinted employee are limited to and the proceeds in the  
12 fund may only be applied to the actual costs, including personnel costs,  
13 incurred as a result of the fingerprint checks. The fingerprint fund is a  
14 continuing fund which is not subject to reversion.

15 D. Personnel required to be fingerprinted as prescribed in subsection  
16 A of this section shall certify on forms that are provided by the school and  
17 notarized whether they are awaiting trial on or have ever been convicted of  
18 or admitted in open court or pursuant to a plea agreement committing any of  
19 the following criminal offenses in this state or similar offenses in another  
20 jurisdiction:

- 21 1. Sexual abuse of a minor.
- 22 2. Incest.
- 23 3. First or second degree murder.
- 24 4. Kidnapping.
- 25 5. Arson.
- 26 6. Sexual assault.
- 27 7. Sexual exploitation of a minor.
- 28 8. Felony offenses involving contributing to the delinquency of a  
29 minor.
- 30 9. Commercial sexual exploitation of a minor.
- 31 10. Felony offenses involving sale, distribution or transportation of,  
32 offer to sell, transport, ~~or~~ or distribute or conspiracy to sell, transport or  
33 distribute marijuana or dangerous or narcotic drugs.
- 34 11. Felony offenses involving the possession or use of marijuana,  
35 dangerous drugs or narcotic drugs.
- 36 12. Misdemeanor offenses involving the possession or use of marijuana  
37 or dangerous drugs.
- 38 13. Burglary in the first degree.
- 39 14. Burglary in the second or third degree.
- 40 15. Aggravated or armed robbery.
- 41 16. Robbery.
- 42 17. A dangerous crime against children as defined in section 13-705.
- 43 18. Child abuse.
- 44 19. Sexual conduct with a minor.
- 45 20. Molestation of a child.

21. Manslaughter.

22. Aggravated assault.

23. Assault.

24. Exploitation of minors involving drug offenses.

E. A school district may refuse to hire or may review or terminate personnel who have been convicted of or admitted committing any of the criminal offenses prescribed in subsection D of this section or of a similar offense in another jurisdiction. A school district which is considering terminating an employee pursuant to this subsection shall hold a hearing to determine whether a person already employed shall be terminated. In conducting a review, the governing board shall utilize the guidelines, including the list of offenses that are not subject to review, as prescribed by the state board of education pursuant to section 15-534, subsection C. In considering whether to hire or terminate the employment of a person the governing board shall take into account the following factors:

1. The nature of the crime and the potential for crimes against children.

2. Offenses committed as a minor for which proceedings were held under the jurisdiction of a juvenile or an adult court.

3. Offenses that have been expunged by a court of competent jurisdiction, if the person has been pardoned or if the person's sentence has been commuted.

4. The employment record of the person since the commission of the crime if the crime was committed more than ten years before the governing board's consideration of whether to hire or terminate the person.

5. The reliability of the evidence of an admission of a crime unless made under oath in a court of competent jurisdiction.

F. Before employment with the school district, the district shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations which may be relevant to a person's fitness for employment. A governing board shall adopt procedures for conducting background investigations required by this subsection, including one or more standard forms for use by school district officials to document their efforts to obtain information from previous employers. A school district may provide information received as a result of a background investigation required by this section to any other school district, to any other public school and to any public entity that agrees pursuant to a contract or intergovernmental agreement to perform background investigations for school districts or other public schools. School districts and other public schools may enter into intergovernmental agreements pursuant to section 11-952 and cooperative purchasing agreements pursuant to rules adopted in accordance with section 15-213 for the purposes of performing or contracting for the performance of background investigations and for sharing the results of background investigations required by this subsection. Information obtained about an employee or applicant for employment by any

1 school district or other public school in the performance of a background  
2 investigation may be retained by that school district or the other public  
3 school or by any public entity that agrees pursuant to contract to perform  
4 background investigations for school districts or other public schools and  
5 may be provided to any school district or other public school that is  
6 performing a background investigation required by this subsection.

7 G. A school district may fingerprint any other employee of the  
8 district, whether paid or not, or any other applicant for employment with the  
9 school district not otherwise required by this section to be fingerprinted on  
10 the condition that the school district may not charge the costs of the  
11 fingerprint check to the fingerprinted applicant or nonpaid employee.

12 H. A school district shall fingerprint or require the submission of a  
13 full set of fingerprints of any contractor, subcontractor or vendor or any  
14 employee of a contractor, subcontractor or vendor who is contracted to  
15 provide services on a regular basis on school property. The school district  
16 may charge the costs of the fingerprint check to the contractor,  
17 subcontractor or vendor or the employee of the contractor, subcontractor or  
18 vendor. A school district governing board shall adopt policies that may  
19 exempt persons who are not likely to have direct, unsupervised contact with  
20 pupils from the requirements of this subsection. A school district, its  
21 governing board members, its school council members and its employees are  
22 exempt from civil liability for the consequences of adoption and  
23 implementation of policies and procedures pursuant to this subsection unless  
24 the school district, its governing board members, its school council members  
25 or its employees ~~are guilty of gross negligence or intentional misconduct~~  
26 **ACTED WITH GROSS NEGLIGENCE**. For the purposes of this subsection, "provide  
27 services on a regular basis" means services provided by a contractor,  
28 subcontractor or vendor at least five times each month on school property.

29 I. Subsection A of this section does not apply to a person who  
30 provides instruction or other education services to a pupil, with the written  
31 consent of the parent or guardian of the pupil, under a work release program,  
32 advance placement course or other education program that occurs off school  
33 property.

34 J. Public entities that agree pursuant to contract to perform  
35 background investigations, public schools, the department of education and  
36 previous employers who provide information pursuant to this section are  
37 immune from civil liability unless the information provided is false and is  
38 acted on by the school district to the harm of the employee and the public  
39 entity, the public school, the previous employer or the department of  
40 education knows the information is false or acts with reckless disregard of  
41 the information's truth or falsity. A school district which relies on  
42 information obtained pursuant to this section in making employment decisions  
43 is immune from civil liability for use of the information unless the  
44 information obtained is false and the school district knows the information

1 is false or acts with reckless disregard of the information's truth or  
2 falsity.

3 K. The superintendent of a school district or chief administrator of a  
4 charter school or the person's designee who is responsible for implementing  
5 the governing board's policy regarding background investigations required by  
6 subsection F of this section and who fails to carry out that responsibility  
7 is guilty of unprofessional conduct and shall be subject to disciplinary  
8 action by the state board.

9 L. A school district may hire noncertificated personnel before  
10 receiving the results of the fingerprint check but may terminate employment  
11 if the information on the form provided in subsection D of this section is  
12 inconsistent with the information received from the fingerprint check. In  
13 addition to any other conditions or requirements deemed necessary by the  
14 superintendent of public instruction to protect the health and safety of  
15 pupils, noncertificated personnel who are required or allowed unsupervised  
16 contact with pupils may be hired by school districts before the results of a  
17 fingerprint check are received if all of the following conditions are met:

18 1. The school district that is seeking to hire the applicant shall  
19 document in the applicant's file the necessity for hiring and placement of  
20 the applicant before a fingerprint check could be completed.

21 2. The school district that is seeking to hire the applicant shall do  
22 all of the following:

23 (a) Ensure that the department of public safety completes a statewide  
24 criminal history information check on the applicant. A statewide criminal  
25 history information check shall be completed by the department of public  
26 safety every one hundred twenty days until the date that the fingerprint  
27 check is completed.

28 (b) Obtain references from the applicant's current employer and two  
29 most recent previous employers except for applicants who have been employed  
30 for at least five years by the applicant's most recent employer.

31 (c) Provide general supervision of the applicant until the date that  
32 the fingerprint check is completed.

33 (d) Report to the superintendent of public instruction on June 30 and  
34 December 31 the number of applicants hired before the completion of a  
35 fingerprint check. In addition, the school district shall report the number  
36 of applicants for whom fingerprint checks were not received after one hundred  
37 twenty days and after one hundred seventy-five days of hire.

38 M. Notwithstanding any other law, this section does not apply to  
39 pupils who attend school in a school district and who are also employed by a  
40 school district.

41 N. A person who makes a false statement, representation or  
42 certification in any application for employment with the school district is  
43 guilty of a class 3 misdemeanor.

44 O. For the purposes of this section, "background investigation" means  
45 any communication with an employee's or applicant's former employer that

1 concerns the education, training, experience, qualifications and job  
2 performance of the employee or applicant and that is used for the purpose of  
3 evaluating the employee or applicant for employment. Background investigation  
4 does not include the results of any state or federal criminal history records  
5 check.